

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

United States of America,

—v—

Gary Thomas,

Defendant.

13-cr-360 (AJN)

ORDER

ALISON J. NATHAN, Circuit Judge, sitting by designation:

On September 13, 2022, the Court received a letter from Defendant Gary Thomas contending that the presentence investigation report (PSR) erroneously reflected application of a sentencing enhancement under U.S.S.G. § 2D1.1(b)(2) notwithstanding that the Court had sustained his objection to application of that enhancement and requesting the appointment of counsel to assist him in correcting the PSR. Dkt. No. 408. On October 7, 2022, the Government filed a letter indicating that it did not oppose the request to amend the PSR. Dkt. No. 410. On October 11, 2022, the Court granted Defendant’s request to amend the PSR as unopposed, and appointed the Federal Defenders of New York, Inc. to represent Defendant in this matter, to propose an order effectuating the relief Defendant sought, and to assist Defendant in filing a financial affidavit. Dkt. No. 414. The next day, counsel from the Federal Defenders entered an appearance on Defendant’s behalf. Dkt. No. 415.

On February 4, 2023, Defendant moved to amend the PSR to reflect the inapplicability of the sentencing enhancement. Dkt. No. 416. Two days later, the Court ordered the U.S. Department of Probation to amend the PSR “to reflect the fact that the Court sustained the defendant’s objection to the two-level sentencing enhancement for a credible threat to use

violence under U.S.S.G. § 2D1.1(b)(2),” and to “provide a copy of the revised Presentence Report to defense counsel and the Federal Bureau of Prisons no later than March 1, 2023.” Dkt. No. 417. On March 28, 2023, a revised PSR was entered on the docket. Dkt. No. 418.

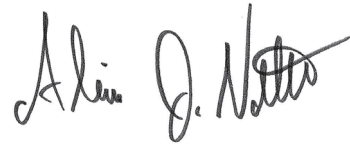
Earlier today, the Court received the attached letter from Defendant, filed *pro se* and dated April 8, 2023, stating that he has not yet received the revised PSR and that he has been unable to contact defense counsel.

By no later than **May 3, 2023**, defense counsel shall contact Defendant regarding this matter and provide him with a copy of the revised PSR, Dkt. No. 418, and shall file a letter on the docket confirming the same.

The Clerk of Court is respectfully directed to mail a copy of this Order to Mr. Thomas and to note the mailing on the public docket. The Court will forward a copy of this order to Jennifer Brown, the Attorney-In-Charge of the SDNY Office of the Federal Defenders of New York.

SO ORDERED.

Dated: April 19, 2022  
New York, New York

A handwritten signature in black ink, appearing to read "Alison J. Nathan", with a stylized flourish at the end.

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ALISON J. NATHAN  
United States Circuit Judge,  
sitting by designation

Gary Thomas  
Register No. 08951-094, FCI Butner Low  
PO BOX 999  
BUTNER NC 27509-0999



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RUBY J. KRAJICK

CLERK, U.S. DISTRICT COURT SOUTHERN NEW YORK

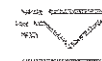
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April 8, 2023

Ruby J. Krajick, Clerk of Court  
United States District Court  
Southern District of New York  
Thurgood Marshall  
United States Courthouse  
40 Foley Square  
New York, NY 10007

**RE: *United States v. Gary Thomas***  
*USDC No: 1:13-CR-00360-AJN-2*

Dear Mr. Krajick:

This letter is to respectfully request that the Court intervene on my behalf by insuring that the U.S. Department of Probation actually amend my PSR and provide a copy of the amended PSR to the Federal Bureau of Prisons.

On February 6, 2023, this Court ordered that the U.S. Department of Probation amend my PSR to reflect the fact that the Court sustained my objection to the two-level sentencing enhancement for a credible threat to use violence under U.S.S.G. § 2D1.1(b)(2). The Department of Probation was directed to remove that sentencing enhancement from my Presentence Report. The Department of Probation was further directed to provide a copy of the revised Presentence Report to defense counsel and the Federal Bureau of Prisons no later than March 1, 2023. *See Criminal Docket 1:13-CR-00360-AJN-2, at No. 417.*

It has been over a month since the March 1, 2023, deadline. Yet, the Federal Bureau of Prisons has not received the amended PSR from the U.S. Department of Probation. And, to make matters worse, the attorney appointed to represent me [REDACTED] she cannot assist me—and her office has been unable to help me.

I need to know whether the U.S. Department of Probation has actually amended my PSR, as ordered by the Court. Due to the error in my PSR, I was disqualified for relief under the CARES Act. And because I do not know whether the U.S. Department of Probation has already actually amended my PSR, I cannot renew my request to be placed on home confinement under the CARES

Act, or move for compassionate release because both actions would certainly be denied due to the erroneous § 2D1.1(b)(2) violence enhancement.

Accordingly, so I can renew my request to be placed on home confinement under the CARES Act, or move for compassionate release, I respectfully ask that the Court intervene on my behalf by insuring the U.S. Department of Probation actually amends my PSR and that they forward the amended PSR to the Federal Bureau of Prisons.

Thank you for your consideration of this matter. If, however, you have any questions or need additional information, please contact me immediately.

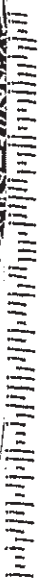
Sincerely,

/s/ Gary Thomas

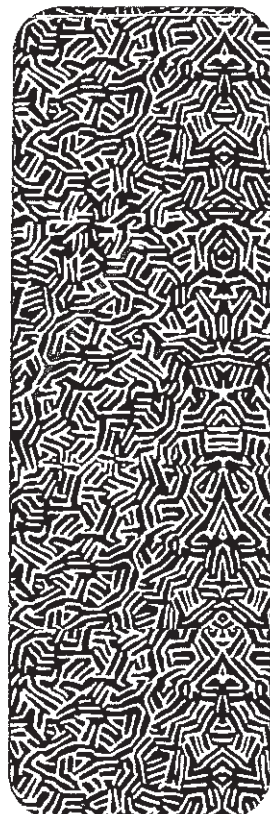
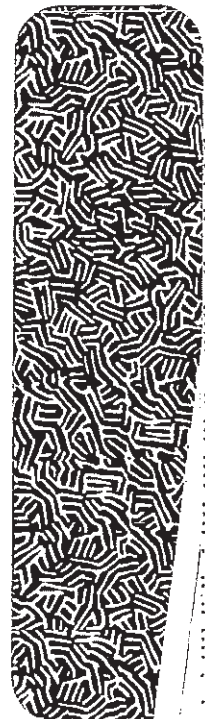
Gary Thomas  
Register No. 08951-094



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